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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,795	12/28/2001	Brad R. Black	PAT 2222-2	3078
26123	7590	10/06/2006	EXAMINER	
BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			LIM, KRISNA	
		ART UNIT	PAPER NUMBER	
		2153		

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/028,795	BLACK ET AL.	
	Examiner	Art Unit	
	Krisna Lim	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-22 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

1. The indicated allowability of claims 1-22 in the last office action is withdrawn in view of the newly discovered reference(s) to Auerbach [U.S. Patent No. 6,832,253].

This reference is provided by the second pair panel of the USPTO .

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Auerbach [U.S. Patent No. 6,832,253].

4. Auerbach anticipates (e.g., see Figs. 1-6) the invention substantially as claimed. Taking claim 1 as an exemplary claim, the reference anticipates a data network management system for positioning data (proximity based content servers) in data network of nodes, the data network having a plurality of data servers (see the abstract, video servers 205, 209 and 211 of Fig. 2a), and the data network having a plurality of end users (the clients 213, 216 and 217 of Fig. 2a), the system (Figs. 2a and 2b) including:

a) a main data storage means (a content library 214 of Fig. 2a), content libraries 323, 325 and 327 of Fig. 3a) for storing the data sent to the end users in the data network;

b) demand monitoring means (control system 215 of Fig. 2a) for monitoring end user requests for data (e.g., see Fig. 2a, col. 7, lines 19-21);

c) a data positioning means (proximity based content servers), responsive to said demand monitoring means, for sending a copy of data stored in the main data storage

Art Unit: 2153

means to one or more selected data servers selected from the plurality of servers based on specific predetermined criteria (proximities, Fig. 3b, proximity tools of Fig. 6), each of said one or more data servers having a location proximate to at least one end user requesting the data from a node (e.g., see the abstract, col. 4, lines 19-23, 39-42, col. 6, lines 15-54, col. 7);

d) memory means for maintaining a data file containing a current location of the data sent to said selected data servers (inherent in the control system 215, col. 6, lines 15-40).

1. As to claim 2, it is inherent that a deletion means exists in the content library.
6. As to claims 3 and 5, Auerbach anticipates a redirection means (determine and identify a server, see col. 7).
7. As to claim 4, Auerbach anticipates the data server is selected based on the following predetermined criteria (e.g., see col. 8) chosen from the group consisting of:
 - a) number of network hubs in a preferred path between the first data server and one end user (possible path, geographically shortest path);
 - b) speed of a link between the data network and one end user (bandwidth);
 - c) amount of traffic along a preferred path between the first data server and one end user (col. 8, lines 12-15).
8. Claims 6-22 are similar in scope as of claims 1-5, and therefore claims 6-22 are rejected for the same reasons set forth above for claims 6-22.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the

period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Wednesday and Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

September 30, 2006



KRISNA LIM
PRIMARY EXAMINER